

The Honorable Ricardo S. Martinez
Noted for: January 29, 2021

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

JIKIRI BAUTISTA, an individual, ARI
SILVA, an individual;

Plaintiffs,

v.

WFS EXPRESS, a Delaware corporation,
CONSOLIDATED AVIATION SERVICES,
a New York corporation;

Defendants.

NO. 2:18-cv-00757 RSM

[PROPOSED] ORDER GRANTING
STIPULATED MOTION FOR
CERTIFICATION OF SETTLEMENT
CLASS AND FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Before the Court is the Parties' Stipulated Motion for Certification of Settlement Class and for Preliminary Approval of Class Action Settlement (the "Stipulated Motion"). The Court has considered the Stipulated Motion, together with its supporting declarations and exhibits.

This Court has reviewed the Parties' Conditional Settlement Agreement ("Agreement"), as well as the files, records, and proceedings to date in this matter. For purposes of this Order, capitalized terms used below shall have the meaning ascribed to them in the Stipulated Motion, unless otherwise defined.

Based on this Court's review of the Agreement and all of the files, records, and proceedings herein, the Court concludes, upon preliminary examination, that the Agreement and

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Settlement appear fair, reasonable, and adequate, and within the range of reasonableness for preliminary settlement approval, and that a hearing should and will be held after notice to the Settlement Class (as defined in Paragraph B below) to confirm that the Agreement and Settlement are fair, reasonable, and adequate and to determine whether the Settlement should be approved and final judgment entered in this action based upon the Agreement.

IT IS HEREBY ORDERED THAT:

A. Preliminary Approval of Proposed Settlement.

The Agreement is preliminarily approved as fair, reasonable, and adequate and within the range of reasonableness for preliminary settlement approval. The Court finds that: (a) the Agreement resulted from extensive arm's length negotiations; and (b) the Agreement is sufficient to warrant notice of the Settlement to persons in the Settlement Class and a full hearing on the approval of the Settlement.

B. Class Certification For Settlement Purposes Only.

Pursuant to Federal Rule of Civil Procedure 23(c), the Court conditionally certifies, for settlement purposes only, the following Settlement Class:

All hourly employees at Employers' Sea-Tac International Airport ("STIA") facility who worked on the Amazon contract during the period between May 15, 2016 and November 21, 2020, and who have not disclaimed in sworn testimony experiencing missed meal or rest periods.

The Court finds that the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a) are satisfied for settlement purposes. The Court also finds that the predominance, manageability, and superiority requirements of Rule 23(b)(3) are satisfied for settlement purposes.

Accordingly, the Court orders as follows:

1. Plaintiffs are appointed Class Representative; and

2. Plaintiffs' counsel are hereby appointed and designated as counsel for the above-described Settlement Class and are authorized to act on behalf of the members of the Settlement Class.

C. Settlement Hearing.

A final approval hearing (the "Settlement Hearing") shall be held before the Honorable Ricardo S. Martinez on _____ as set forth in the Notice to the Settlement Class, to determine whether the Agreement is fair, reasonable, and adequate and should be approved. Papers in support of final approval of the Agreement, the incentive award to Plaintiffs, and Class Counsel's application for an award of attorneys' fees, costs and expenses (the "Fee Application") shall be filed with the Court according to the schedule set forth in Paragraph M below. The Final Settlement Approval Hearing, and all dates provided for herein, may, without further notice to the Class, be continued or adjourned by order of this Court. After the Settlement Hearing, the Court may enter a settlement order and final judgment in accordance with the Agreement that will adjudicate the rights of the Settlement Class Members with respect to the Released Claims being settled. The scope of the Released Claims shall be: "those arising under the Washington Minimum Wage Act, RCW 49.46 *et seq.*, the Washington Wage Rebate Act, RCW 49.52 *et seq.*, the Washington Industrial Welfare Act, RCW 49.12 *et seq.*, and any claim to attorneys' fees and costs based on the claims released in this Paragraph, which were affirmatively asserted or could have been asserted in the Lawsuit.

D. Class Notice.

Class Notice shall be sent within thirty (30) days following entry of this Order. CMT is appointed as Claims Administrator.

E. Mail Notice.

The Claims Administrator will provide mail notice to persons in the Settlement Class for whom the Defendants possess mailing addresses. Mail Notice will be sent via first-class mail to the most recent mailing address as reflected in reasonably available employment records of the

Defendant. Skip tracing shall be performed by the Claims Administrator for all returned mail. The Claims Administrator will also provide e-mail notice to Settlement Class Members' last known e-mail address, when available.

F. Findings Concerning Class Notice.

The Court finds that the foregoing program of Class Notice and the manner of its dissemination is the best practicable notice under the circumstances and is reasonably calculated to apprise the Settlement Class of the pendency of this action and their right to object to or exclude themselves from the Settlement Class. The Court further finds that the Class Notice program is reasonable, that it constitutes due, adequate, and sufficient notice to all persons entitled to receive notice and that it meets the requirements of due process and FRCP 23. The Court hereby approves the Notice in substantially the same form as that attached as Exhibit Two to the Declaration of Duncan C. Turner filed in support of the Stipulated Motion.

G. Administration.

The Court confirms that it is appropriate for the Defendants to provide the information necessary to provide the notice contemplated herein and to administer the settlement, including names, addresses, and personal identifying information.

H. Exclusion from the Settlement Class.

Persons in the Settlement Class will possess the right to opt out by sending a written request to a designated address within thirty (30) days after the Notice Mailing Date. All Settlement Class Members who do not opt out in accordance with the terms set forth herein will be bound by all determinations and judgments in this action. Exclusion requests must contain the person's name, address, telephone number, and signature, and must include the following statement: "I request to be excluded from the class settlement in *Bautista v. WFS Express, Inc.*, No. 2:18-cv-00757 RSM." The Claims Administrator will retain a copy of all requests for exclusion. Not later than 15 days from the exclusion deadline, the Claims Administrator shall file with the Court a declaration that provides copies of all exclusion requests received.

1 **I. Objections and Appearances.**

2 Any person in the Settlement Class who has not timely submitted a valid request for
3 exclusion from the Settlement Class, and thus is a Settlement Class Member, may object to the
4 proposed Settlement and appear at the Final Approval Hearing to argue that the proposed
5 Settlement should not be approved and/or to oppose the application of Class Counsel for an
6 award of attorneys' fees and the incentive award to the named Plaintiffs.

- 7 1. In order to object to the Settlement, a Settlement Class member must make
8 any objection in writing and file it with the Court and serve on all Parties not
9 later than thirty (30) days after the Notice Mailing Date. The objection must
10 include the person's name, address, telephone number, and signature, and
11 must set forth, in clear and concise terms, the legal and factual arguments
12 supporting the objection. Any objections that are not timely filed and mailed
13 shall be forever barred.
- 14 2. In order to speak at the hearing, a Settlement Class member also must file with
15 the Court and serve on all Parties a Notice of Intention to Appear at the
16 Fairness Hearing with the Court no later than thirty (30) days after the Notice
17 Mailing Date. The Notice must include the person's name, address, telephone
18 number, and signature.

19 **J. Further Papers In Support Of Settlement And Fee Application.**

20 Class Counsel's Motion for Attorneys' Fees and the Motion for Final Approval shall
21 be filed within thirty (30) days of the Exclusion/Objection Deadline as provided in Paragraph
22 M.

1 **K. Effect of Failure to Approve the Agreement.**

2 In the event the Agreement is not approved by the Court, or for any reason the Parties
3 fail to obtain a Final Judgment as contemplated in the Agreement, or the Agreement is
4 terminated pursuant to its terms for any reason, then the following shall apply:

- 5 1. All orders and findings entered in connection with the Agreement shall
6 become null and void and have no further force and effect, shall not be used or
7 referred to for any purposes whatsoever, and shall not be admissible or
8 discoverable in any other proceeding;
- 9 2. The conditional certification of the Settlement Class pursuant to this Order
10 shall be vacated automatically and void; no doctrine of waiver, estoppel, or
11 preclusion shall be asserted in any litigated certification proceedings in the
12 Action;
- 13 3. The Agreement and its existence shall be inadmissible to establish any fact or
14 any alleged liability of the Defendant for the matters alleged in this action or
15 for any other purpose; and
- 16 4. Nothing contained in this Order is, or may be construed as, any admission or
17 concession by or against the Defendant or Plaintiffs on any point of fact or
18 law.

18 **L. Stay/Bar Of Other Proceedings.**

19 All proceedings in this action are stayed until further order of the Court, except as may
20 be necessary to implement the terms of the Settlement. Pending final determination of
21 whether the Settlement should be approved, Plaintiffs, all persons in the Settlement Class and
22 persons purporting to act on their behalf are enjoined from commencing or prosecuting (either
23 directly, representatively, or in any other capacity) against any of the Released Parties any
24 action, arbitration, or proceeding in any court, arbitration forum, or tribunal asserting any of
25 the Released Claims as defined in the Agreement.

M. **Timeline.**

ACTION	DATE
Preliminary Approval Order Entered	At the Court's Discretion
Notice Mailing Date	Within 30 days following entry of the Preliminary Approval Order
Exclusion/Objection Deadline	30 days after Notice Mailing Date
Claims Administrator's Filing of Exclusion Requests	15 days after Exclusion/Objection Deadline
Plaintiffs' Counsel's Fee Motion Submitted	30 days after Exclusion/Objection Deadline
Final Approval Brief and Response to Objections	30 days after Exclusion/Objection Deadline
Final Approval Hearing / Noting Date	Between 100-140 days of entry of the Preliminary Approval Order
Final Approval Order Entered	At the Court's Discretion

The Final Hearing is scheduled on _____, 2020 at _____
in Courtroom _____ at the United States Courthouse, 700 Stewart Street, Seattle, WA
98101.

1 **IT IS SO ORDERED**

2 DATED this _____ day of _____, 2021.

3
4
5 _____
6 HONORABLE RICARDO MARTINEZ

7 Presented by:

8 BADGLEY MULLINS TURNER, PLLC

9 /s/ Duncan C. Turner

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